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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In The Matter Of)
Idaho Public Utilities Commission)
Petition For Declaratory Ruling)
Concerning Section 251(h)(2) of the)
Communications Act)
Treatment of CTC Telecom, Inc. and)
Similarly Situated Carriers as)
Incumbent Local Exchange Carriers)
Under Section 251 (h)(2) of the)
Communications Act)

CC Docket No. 98-221

AT&T COMMENTS

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") submits these comments on the petition by the Idaho Public Utilities Commission ("IPUC") requesting the Commission to issue an order declaring CTC Telecom, Inc. ("CTC") and "similarly situated" Local Exchange Carriers ("LECs") to be incumbent LECs under Section 251(h)(2) of the Telecommunications Act.¹

AT&T urges the Commission to take a cautious approach to this and other petitions seeking to impose on other LECs the duties that Congress has specifically limited to the "incumbent" LECs as defined in the Act. The Act's definition of "incumbent LEC" makes clear that the Section 251(c) obligations are specifically aimed at existing incumbents whose historical monopolies could be eroded, if

¹ Public Notice; CC Docket No. 98-221, DA 98-2510, Dec. 8, 1998; see also 47 CFR 51.223(b).

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at all, by requiring them to share their economies of scale, density and connectivity through the interconnection, unbundling and resale requirements. As the Commission has recognized, "[i]mposing the section 251(c) obligations on a carrier that is not an incumbent LEC would contravene the carefully-calibrated regulatory regime crafted by Congress."² Indeed, imposing such obligations on carriers other than incumbent LECs (or their affiliates operating within the incumbent's territory)³ in all but compelling circumstances would be inconsistent with the "pro-competitive, de-regulatory framework" created by the Act.

The Commission has in the past approached its responsibilities under Section 251(h)(2) with appropriate care and caution. For example, the Commission carefully analyzed the statute and the record in deciding to classify

² Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act, 12 FCC Rcd. 6925, 6937-38 (1997) ("GTA NPRM"). Section 51.223(a) expressly prohibits a state from imposing section 251(c) obligations on LECs who are not incumbents, absent a Commission order issued in accordance with Section 251(h)(2). Contrary to the IPUC's suggestion (pp. 11-12), a state is not free to impose Section 251(c) obligations on other LECs with respect to intrastate services without a Commission order under 251(h)(2). Section 51.223 was not vacated by the Court of Appeals, which is not surprising in light of the express delegation of authority to the Commission in Section 251(h)(2).

³ See generally Comments of AT&T Corp., Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, filed September 25, 1998, pp. 5-38; Reply Comments of AT&T Corp., Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, filed October 16, 1998, pp. 18-41.

the Guam Telephone Authority ("GTA") as an incumbent LEC.⁴ In that proceeding, the Commission noted that GTA operated the "twenty-ninth largest local telephone network in the United States," and was the "sole provider" of local service to the entire population of the island.⁵ The Commission concluded that GTA possessed monopoly power "comparable to" and had "replaced" an incumbent LEC as those terms are used in sections 251(h)(2)(A) and (B), respectively. The Commission declined, however, to classify "similarly situated" LECs as incumbent LECs "because the record [did] not identify any members of such category."⁶

Based on the record it compiles on the IPUC's petition in this proceeding, the Commission may well be able to conclude that the criteria set forth in Section 251(h)(2) have been met, and therefore classify CTC as an incumbent LEC. According to the IPUC's Petition (p. 2), CTC has an "exclusive contract" with the developer of the Hidden Springs subdivision to provide telecommunications services to the residents. The Petition also suggests (*id.*) that U S West, the incumbent LEC for the study area within which the Hidden Springs development is located, lacks facilities in the area. Whether, under the circumstances (including its

⁴ See Treatment of the Guam Telephphone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act, 13 FCC Rcd. 13,765 (1998) ("GTA Order"); GTA NPRM.

⁵ GTA NPRM, 12 FCC Rcd. at 6931; GTA Order, 13 FCC Rcd. at 13,768.

⁶ Id. at 13,770.

"exclusive contract" with the developer), these facts mean that CTC has "advantages that would render competitive entry by other facilities-based carriers very difficult, if not impossible" should be a critical factor in the Commission's determination to classify CTC as an incumbent LEC.⁷

The IPUC (p. 11) also requests that the order adopted by the Commission apply not merely to CTC but to all other "similarly situated LECs." As a preliminary matter, the IPUC does not make clear the characteristics that would warrant a conclusion that a carrier is "similarly situated." More fundamentally, granting IPUC's request would be a dramatic departure from the Commission's decision in the GTA order not to adopt a rule that would apply to a class or category of "similarly situated" LECs in the "absence of a record identify[ing] any members of such class or category."⁸ Finally, the approach urged by the IPUC could result in the imposition of Section 251(c) obligations in circumstances where the statutory criteria have not been

⁷ See GTA NPRM, 12 FCC Rcd. at 6943-44. At the same time, the IPUC's (pp. 7, 9) suggestion that CTC has "market power, economies of density, connectivity and scale comparable" to incumbents like U S West and even GTA appears to be vastly overstated. In Guam, for example, GTA was the sole carrier on an entire island with 65,000 residents. In contrast, the Hidden Springs development is located within the existing study area of U S West, one of the largest incumbent LECs in the world, as part of the Boise exchange. U S West has switches and other facilities adjacent to if not located in Hidden Springs.

⁸ GTA Order, 13 FCC Rcd. at 13,770.

met, in contravention of Congress's "carefully calibrated regulatory regime."⁹

Respectfully submitted,

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⁹ GTA NPRM, 12 FCC Rcd. at 6937-38.

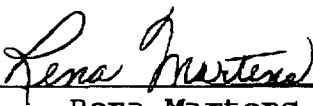
CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 11th day of January, 1999, a copy of the foregoing "AT&T Comments" was served by U.S. first class mail, postage prepaid, to the parties listed below.

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